American Opera Musical Theatre Company *and* Associated Musicians of Greater New York, Local 802, AFM. Case 2–CA–32154

January 8, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On March 1, 2000, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions, a brief in support of exceptions, and a reply brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board orders that the Respondent, American Opera Musical Theatre Company, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Mindy Lando, Esq., for the General Counsel.
Neil Capobianco, Esq. (Vedder, Price, Kaufman & Kammholz), for the Respondent.
Harvey Mars, Esq. (Liebowitz & Mars), for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me in New York, New York, on December 1, 1999. The complaint here, which issued on July 30, 1999, and was based on an unfair labor practice charge that was filed on April 26, 1999, by Associated Musicians of Greater New York, Local 802, AFM, the Union, alleges that American Opera Musical Theatre Company, the Respondent, withdrew recognition from the Union as the exclusive bargaining representative of its employees on about December 11, 1998,[1] in violation of Section 8(a)(5) of the Act.

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits, and I find, that it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

The Union represents approximately 11,000 professional musicians in the New York metropolitan area. There is no doubt, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

The Respondent is engaged in the operation of a small chamber opera company. It was formed in 1995 for the purpose of giving singers and musicians experience in a field where it is difficult to obtain professional experience. For its performances, the Respondent usually hired singers and obtained musicians from local music schools. The procedure that was followed by the Respondent and, apparently, other similar groups was to hire a contractor and she/he then chooses the musicians that the company will use for the performances. The Respondent was scheduled to perform La Boheme at Staten Island College in Staten Island, New York, on the evening of October 31 and the afternoon of November 1; the contractor for this job was Marcia Havivi. On October 28, the college notified Diana Corto, the Respondent's artistic director (the individual who initiated and operates the Respondent) that it was canceling the October 31 performance because of poor ticket sales. Timothy Dubnau, the Union's director of organizing, testified that at the end of October (sometime between October 28 and 31) he received a call from Havivi, a member of the Union, saying that some of the musicians at the Staten Island job[2] were complaining about the pay and working conditions at the job. At about that time he called Corto, but she did not

[1] The Respondent has excepted, inter alia, to the judge's failure to find that the Union never identified to the Respondent any geographical boundaries for its proposed bargaining unit. The judge found in the remedy and the recommended Order that a unit comprised of the Respondent's musicians is an appropriate unit. The unit found appropriate by the judge is the unit that the Union sought. Indeed, the record shows that the Respondent did not challenge the Union's demand for recognition in a unit of its musicians at the time the demand was made.

Member Hurtgen sets forth the following views regarding the composition of the unit. Prior to the withdrawal of recognition, the Respondent had recognized the Union as the representative of all of its musicians. There were nine such musicians. The General Counsel alleged that the appropriate unit included musicians, contractors, and librarians. There is no evidence that the Respondent employs librarians. At the time of recognition, one of the nine musicians was a contractor, i.e., she was in charge of seeking out musicians for hire. There is no contention that she was a supervisor. On a different issue, although the Respondent's answer denied the appropriateness of the unit, it appears that such denial was intended to reflect the Respondent's position that the unit should not include "student-musicians" who are retained when the Respondent's opera company travels to other cities. Even assuming that those persons are employees, the recognition did not cover them, and the Union does not seek them. Thus, the unit involved here does not cover them. Finally, although the Respondent now takes the position that the "student musicians" must be a part of an appropriate unit, it points to no evidence to support this view.

The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[1] Unless indicated otherwise, all dates referred to relate to 1998.
[2] All the musicians on the job were union members at the time.

return his call until shortly before the Staten Island performance was to take place. In this call, Dubnau told Corto that "several of the musicians had complaints and we were interested in coming up with an agreement for the upcoming performance at the College of Staten Island." He also told her that all the musicians were union members, and that they were complaining about the low pay, and that the cancellation of one performance reduced their pay even more "and I wondered if we could work out an agreement where we got some of the pay restored, and also having some pension and health benefits paid on the performance that was about to take place at Staten Island." Corto responded that she had an extremely small company and did not have any more money to spend. Because of the late date:

> I gave her another idea, an alternative, which was basically we would agree to have the job go on completely nonunion for not one more penny in wages . . . and that in exchange, for that she would sign a recognition agreement and she'd agree, when we both had more time, since this was such a last minute thing, to actually sit down and negotiate.

Corto told him that she was angry at Havivi and the musicians for calling him and that she would not hire some of them again. In light of this statement, Dubnau insisted on a primary hiring list to ensure that the musicians were not punished for calling him. He told her that since she was a small company the Union had a procedure to deal with such companies that was fair to the companies, the musicians, and the Union:

> Since so many of our members make a living in the major halls, if we allowed one employer to come in for less than scale wages there it would be damaging to us because it would create a precedent and ultimately you would have a downward pressure on wages for so many musicians who make a living there.
>
> So I basically explained to her what we call a fair competition clause, which essentially carves out the major halls[3] and says that the employer agrees to pay the freelance promulgated Local 802 wage rates for the halls. And in exchange for that agreement I told her that we would be willing to be extremely flexible in the smaller halls where I understood she did most of her work.

He also told her that the musicians at the Staten Island job were prepared to refuse to work unless there was an agreement with the Union. Corto told him that there was no way that she could increase the pay for the Staten Island performance, but she agreed to fax him a statement saying that she recognized the Union, that she would place the musicians at that job on a primary hiring list, and that she would enter into negotiations soon after the performance was over. Dubnau told Corto that she had to respond by 9 a.m. on October 31. Dubnau then faxed the following letter, dated October 30, to Corto:

> This will confirm our conversation today that no later than 9AM on October 31, 1998, you will fax a letter to Local 802, which agrees to the following:
>
> 1) That no later than November 30, 1998 you will agree to enter into good faith negotiations with Local 802 for a collective bargaining agreement with respect to all terms and conditions or employment, including wages and benefits.
>
> 2) That all 9 musicians (excluding the conductor) who are performing on the engagement on November 1, 1998, will be given the right of first refusal for all future work, and shall be placed on a Primary Hiring List for that purpose.
>
> Local 802 understands that your group may not have the funds sufficient to pay normal union scale; we look forward to entering into meaningful and amicable negotiations with you for your future work.

Apparently, sometime on November 1, Corto faxed to Dubnau an undated letter stating:

> I shall be very pleased to continue negotiations I have already begun with Local 802 to enter into a collective bargaining agreement.
>
> The musicians who are performing on the engagement on November 1, 1998, will be placed on a primary hiring list for future work, and their names, addresses and telephone numbers should be provided to me so that I have means of contacting them.
>
> Thank you for your consideration. I look forward to meeting you soon.

By letter dated November 6, Dubnau wrote to Corto:

> Pursuant to our agreement articulated in your letter faxed on November 1, 1998, Local 802 would like to schedule a meeting with you to begin negotiations for a collective bargaining agreement. Please let me know when you would like to meet. I understand you are busy producing a concert in Kingston, NY on November 21st, so we can meet soon after.
>
> I look forward to reaching an agreement with your organization in the near future. I look forward to your response.

Corto testified that she first heard from Dubnau at about 6 p.m. on October 31, while at the College of Staten Island rehearsing for the opera scheduled for the following day. He said that he was a representative of the Union and that the musicians at the Staten Island job were going to strike the next day because the Saturday performance was canceled and they were not paid for the day. She told him that the college had canceled the performance and she was negotiating with the college to get some money for the canceled performance. She also said that it would not be fair for them to strike because it would put the Company out of business as they needed the proceeds from the November 1 performance to cover their expenses for their upcoming tour. Dubnau told her that he was going to send a fax to her home and "If I don't have it back to me by 9:00 the next morning the musicians are going out on strike." She said: "Look, you're not giving me any time, we're not going to finish here until midnight and I have to have time to consult with people." Dubnau repeated that unless her response was on his

[3] For example, Carnegie Hall, Lincoln Center, and Town Hall are considered "major halls."

desk by 9 a.m. she would not have a performance the next day and that he wanted it returned exactly the way that he had written it. Corto testified that in this telephone conversation, Dubnau did not say that he represented a majority of the musicians and never said that he wanted her to recognize the Union. Corto testified further that she returned home that evening after midnight and Dubnau's fax was in her machine. She made some changes and returned it to Dubnau, as set forth above.

In explaining her use of the words "continue negotiations" Corto testified, "I referred back to a meeting I had in 1996, to the man I had met at the union at that time, which I considered, in my understanding is a type of negotiation." In this regard, she testified that in June 1996, a representative of the Union approached her:

> [He] said he had seen our review in the New York Times and that he wanted me to look at some materials from Local 802. And if ever I were in a position to enter into an agreement with them, I should call him and he'd try to work something out that would be affordable for me. And that was the end of it.

Corto testified that in her understanding, a primary list contains numerous names for the employer to choose the ones that are best for a particular job. "A primary list is not an exclusive list, and I never would have agreed to an exclusive list." For that reason, in her November 1 fax to Dubnau, she agreed to place the musicians on a primary list, and that is why she eliminated the right of first refusal requested in Dubnau's fax. Further, she testified that in the telephone conversation with Dubnau she told him that she would give them two performances near the New York area: "More future work, not all future work."

Shortly after the Staten Island performance, Respondent had scheduled performances in Kingston, New York, Maryland, and some other further locations. Dubnau testified that Corto gave the right of first refusal to the Staten Island musicians on the primary hiring list for the Kingston and Maryland performances. Some of these musicians complained to him about the low pay and the lack of transportation to these performances. He had "amicable" discussions with Corto about these subjects and recollects that she agreed to supply a van to transport the musicians to the performances and to provide hotel rooms, two musicians to a room. He also testified that they agreed on the wages that the musicians were to be paid. Corto testified that Dubnau called him after the Staten Island performance and said that the musicians wanted $200 a performance and their hotel and travel costs paid for the Kingston performance; they agreed that she would pay them $100 a performance and pay the hotel and transportation, but that was it, she would not use these musicians again, and Dubnau made no objection. Dubnau testified that she never said that to him. She testified that she did not want to use the Staten Island musicians at any subsequent performance because "they were horrible. I mean I was so embarrassed." Dubnau told her that she had to use them, and she decided to use them for Kingston and Maryland, and "that'll be the end of it" and she would not use them again. She used some of the Staten Island musicians and "the result was a series of disastrous performances."

Dubnau testified that the Union's bargaining position with Corto was identical to its position with other small musical companies:

> [B]asically, we wanted to protect the integrity of our scales at the major halls, and we didn't want one employer to get a better deal than another employer. We wanted to maintain an even playing field with the major halls, and in exchange for that we would be extremely flexible on nonmajor halls.

He testified, for example, that the Union's proposal had a low scale together with low payments for health and welfare benefits, as the Union's opening proposal. Joseph Eisman, an organizer for the Union, and Mikael Elsila, senior organizer for the Union, represented the Union at a bargaining session with Corto on about December 8. Eisman testified that Elsila described the process of collective bargaining to Corto—that each side began with their opening proposals and responded to each of the other parties' proposals. Elsila gave Corto a copy of the Union's "boilerplate collective bargaining agreement" in line with Dubnau's testimony stated above. Elsila then went over the contract "point by point." Corto said that she was not a well-financed group and could not afford some of the terms in the contract, and Elsila said on a number of occasions that these were just their opening proposals. Corto did not make any counterproposals and said that she would get back to them and left. Elsila testified that at this meeting he explained the Union's proposal point by point to Corto and said that he would welcome a counterproposal. He said that the fair competition clause (referred to in Dubnau's testimony) and the primary hiring list were of special importance to the Union, but the Union would offer her a low freelance scale, and he stressed that this was their opening proposal. Corto left without making a counterproposal.

Corto testified that when she returned from the tour she had a couple of messages from Elsila asking her to come to the Union "for a meeting and just to meet with us." He then called her and asked her to come for just 10 minutes so they could meet and have a cup of coffee, and she agreed to go. Elsila testified, "That does not sound like something I said . . . I could not imagine saying that." When she got to the meeting she was surprised because "It was anything but a casual meeting." Elsila, Eisman, and some musicians were there and they handed her a contract and read it to her. Elsila then asked her, "Would you be prepared to sign it now?" She said that the contract was in conflict with the company's mission of training musicians, it was above their budget, and she would not enter into an agreement without consulting a lawyer. She asked them if they expected her to pay the same rates as the Metropolitan Opera and the New York Philharmonic, because that was absurd, and Elsila said that there was no flexibility in those rates. They told her that they knew that she was going to perform in Town Hall and that they wanted her to pay the contract rates there, although Elsila testified that, at that time, he does not believe that he knew that she had a Town Hall concert scheduled. She said that she had a contract to perform there and there was no way that she could afford to pay those rates, and she left.

Elsila testified that the next thing he heard from Corto was messages that she left on his voice mail, which he played for

Dubnau. The first one on December 9 said that she could not afford the freelance rates, the first call list was unacceptable, and that she would not negotiate further with those provisions. Corto testified that she would not have used the terms "first call list" or "freelance rate." The next message on the following day said that she was so nervous that she broke her foot and "was not in a position to negotiate with the Union." She was struggling to pay her bills, and that Havivi and Tara Chambers, another musician, were troublesome people. She was suspending further negotiations; she does not have the money. She testified that what she said about Havivi and Chambers was that they were antagonistic people and that she does not remember saying that she was suspending negotiations. On December 14 her message said that she would rather close down than deal with the Union.

On December 10, Corto sent the following fax, *inter alia*, to Elsila:

> I was not aware that you invited me to a meeting where musicians and other staff would be present. I would have appreciated knowing that in advance of my arrival to meet with you.
>
> Preliminarily, there is a matter that requires clarification. Tim Dubnau insisted that I give him a letter, upon threat he would call a strike, in which I would give the Staten Island musicians priority for the dates that were forthcoming in Kingston and Rockville. Tim, in fact, dictated the letter that he insisted I submit to him. I gave the musicians priority for those dates only.[4]
>
> Other terms you proposed would force us to close our doors. We could not operate under your proposals.
>
> We are not in a position to enter into a Collective Agreement and I can consider this only for a later date in the future. Under no conditions will I meet with musicians from Staten Island again, and I shall not be able to attend any meeting in January. We lack the budget and resources at this time.

Dubnau testified that in February 1999 he learned from his members that the Respondent had a concert scheduled for Town Hall, a major hall under the Union's contracts, for February 28, 1999, and that the Staten Island musicians who he claims were placed on the primary hiring list by Corto were not hired for that job. He sent representatives to the theatre to speak to the musicians who were hired and threatened to strike the performance. As the performance was coproduced by the Respondent and Town Hall, he discussed the matter with representatives of Town Hall, and they settled the dispute. Town Hall gave the Union a check for $1950;[5] the nine musicians on the Respondent's primary hiring list were to receive $150 each and the musicians performing on February 28, 1999, were to receive $75 each of this amount. The Union agreed not to strike the February 28 performance and Town Hall agreed to use its best efforts to have the Respondent continue negotiations with the Union for all future work and to advise the Respondent that unless it enters into a contract with the Union, the Union will strike all upcoming performances by the Respondent at Town Hall.

The Respondent had another concert scheduled at Town Hall in April; prior to that date, the representatives of Town Hall told Corto that they wanted her to meet with the Union before they would publicize the concert, and the parties met sometime in March. Present for the Union were Dubnau, Eisman, and the Union's attorney; present for the Respondent were Corto and her attorney. Dubnau testified that at this meeting he said that the major halls rates had to be paid in order to protect their members, but they were very flexible about the nonmajor hall rates. He also insisted that she go back to using the musicians on the primary hiring list. He does not remember the Respondent making any counterproposals, and the meeting ended. Eisman testified that at the beginning of this meeting the Union notified Corto that its position was that she was required to employ the musicians on the primary hiring list unless the parties could come to an agreement that would affect this issue, but they never did. Corto testified that there was a "strenuous discussion" about the primary hiring list at this meeting. The Union insisted that she use all the musicians on the list and she said that she would not use incapable musicians. They asked whether she was claiming that none of them was capable and she said that perhaps one was capable. The Union was initially insistent that she use these musicians and then proposed that she use half of them for each performance. She was not agreeable to this and the meeting ended without an agreement.

By letter dated April 28, 1999, Respondent's counsel wrote to the Union's counsel:

> Although we do not consider Diana Corto's fax to Tim Dubnau on November 1, 1998 to have been a conferral of recognition upon Local 802 of the American Federation of Musicians, to the extent it may be deemed such a conferral, it is hereby withdrawn on the grounds that American Opera Musical Theatre Company, Inc. currently employs no musicians or other employees in view of the fact that Sunday's opera production is over.

IV. ANALYSIS

There are some credibility issues that need to be resolved between certain testimony of Dubnau and Elsila and the testimony of Corto on the same subject. I have no difficulty in resolving this conflict in favor of Dubnau and Elsila. They appeared to be testifying in an honest and direct manner and appeared to be willing to admit to facts not helpful to their case. Corto, on the other hand, was hesitant to make any admissions that would assist the General Counsel or the Charging Party. In addition, on cross-examination, she attempted to explain everything, often going on and on, rather than simply answering the question. Finally, much of the testimony of Eisman, Elsila, and Dubnau, especially regarding the negotiations, was reasonable. It would be perfectly understandable for the Charging Party, in negotiations, to insist upon maintaining the rate that is paid to the musicians who appear in the major halls in order to protect these wages, while having a lot of flexibility in negotiations

[4] Dubnau testified that Corto never proposed that limitation nor did he ever agree to it.

[5] The Respondent paid $1000 of this amount.

with a small employer, for other halls. Additionally, I do not credit Corto's testimony wherein she attempts to explain her use of the words "continue negotiations I have already begun with Local 802" by relating it to an incident that allegedly occurred in 1996 when she met a representative of the Union who gave her some union material and told her that if she was ever able to enter into a contract with the Union, she should call him and he would try to work out an affordable contract for her. Initially, I note that Corto's fax to Dubnau states, inter alia: I shall be very pleased to continue negotiations I have already begun with Local 802 to enter into a collective bargaining agreement." Even if I were to credit Corto's testimony about meeting the Union's representative in 1996, that meeting only involved a general discussion of possible future action, not negotiations and, by no means, negotiations "to enter into a collective bargaining agreement." I should also note that Corto's testimony about this meeting with a union representative in 1996 does not sound like the approach that this Union would use, in leaving it up to the employer to call them when it is ready to enter into a contract. If it were, I doubt that the Union would have such a large membership. Rather, I find that the more likely and reasonable interpretation of her words "continue negotiations" in the November 1 fax referred to the discussions the night before between Dubnau and Corto. These discussions were extensive enough to be considered negotiations to be continued, pursuant to Corto's fax.

By fax to the Union on December 10, Corto notified them that she would no longer meet with the Union. By letter dated April 28, 1999, counsel for the Respondent notified the Union that it does not feel that it recognized the Union, but if its actions are deemed to constitute recognition, such conferral is withdrawn. After conferring recognition and engaging in collective bargaining, a respondent is forbidden under Section 8(a)(5) and (d) of the Act from withdrawing recognition and refusing to bargain with the union; it must bargain for a reasonable time during which the relationship can be given a fair chance to succeed. *Franks Bros. Co. v. NLRB,* 321 U.S. 702, 705 (1944). The ultimate issue herein is therefore whether the Respondent recognized the Union on about October 31; if it did, its subsequent withdrawal of recognition was unlawful. The Respondent defends that there was never a proper demand here because the Union never specifically said that it wanted the Respondent to recognize it as the representative of its employees, and never demonstrated to the Respondent its majority status among the unit employees.

As for the initial defense, the Respondent defends that there was no proper request for recognition because of the lack of the word "recognize" and because proof of majority status was never proffered to Corto. I reject this defense for a number of reasons. The Board has often stated, as it did in *Al Landers Dump Truck, Inc.*, 192 NLRB 207, 208 (1971):

> The Board and the Courts have repeatedly held that a valid request to bargain need not be made in any particular form, or in haec verba, so long as the request clearly indicates a desire to negotiate and bargain on behalf of the employees in the appropriate unit concerning wages, hours and other terms and conditions of employment.

The Supreme Court, in *Columbian Enameling & Stamping Co. v. NLRB*, 306 U.S. 292, 297–298 (1939), stated:

> Since there must be at least two parties to a bargain and to any negotiations to bargain, it follows that there can be no breach of the statutory duty by the employer . . . without some indication given to him by them or their representatives of their desire or willingness to bargain. In the normal course of transactions between them, willingness of the employees is evidenced by their request, invitation, or expressed desire to bargain, communicated to their employer.

Further, *Marysville Travelodge,* 233 NLRB 527, 533 (1977), states: "Thus, where an employer becomes aware, through direct or indirect means, that a third person purporting to act with the authority of the employees intends to bargain on their behalf, the test is met." Although Dubnau could have made his intention clearer to Corto in his initial conversation and fax to her, he did ask her to sign a recognition agreement and to sit down and negotiate with the Union. Corto was obviously aware of Dubnau's intentions, because her fax to him states that she will negotiate with the Union to enter into a collective-bargaining agreement. Further proof that she was aware of the Union's intention is that she attended a bargaining session with the Union in December, at which time she was given a copy of the Union's proposed contract, which contained, inter alia, the unit covered, a recognition clause, and a union-security clause. There could have been no doubt in Corto's mind at that time of the Union's intention. In *Nantucket Fish Co.,* 309 NLRB 794, 795 (1992), the Board stated: "A commitment to enter into negotiations with the union is also an implicit recognition of the union. Once the original commitment to bargain is made, the employer cannot unilaterally withdraw its recognition and to do so is a violation of the Act."

The remaining issue is the alleged lack of communication by the Union to Corto of its majority status. I have credited Dubnau's testimony that he told Corto that the musicians were Union members, and the evidence establishes that they were Union members at the time. There, apparently, was little if any doubt in Corto's mind about this because she never questioned the Union about its majority status among these employees. Counsel for the Respondent, in his brief, contends that for recognition to be lawful a union must first prove its majority status. In this regard, he alleges that a union must have a "demonstrable showing of majority status." I agree, but a demonstrable showing of majority status is very different from requiring a union to *demonstrate* its majority status. As the Board stated in *Windsor Place Corp.,* 276 NLRB 445 fn. 1 (1985), citing *Ladies Garment Workers v. NLRB,* 366 U.S. 731, 739–740 (1960):

> We disavow the judge's finding that a union must demonstrate its majority status before an employer can recognize it. Rather, an employer can recognize a union without such a demonstration, but risks 8(a)(2) liability for recognizing a union supported by a minority of the unit employees.

Having found that the Respondent recognized the Union on about November 1, I find that by withdrawing its previously granted recognition of the Union on December 10 and April 28,

1999, and by refusing to bargain further with the Union, the Respondent violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(5) of the Act by withdrawing its recognition of the Union on December 10, 1998, and April 28, 1999, and by refusing to negotiate with the Union subsequent to that time.

THE REMEDY

Having found that the Respondent unlawfully withdrew its earlier recognition and refused to bargain with the Union as the exclusive representative of its employees in an appropriate unit, I shall recommend that it be ordered to cease and desist therefrom and, on request, to bargain collectively with the Union concerning wages, rates of pay, hours of employment and other terms and conditions of employment.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, American Opera Musical Theatre Company, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain collectively with Associated Musicians of Greater New York, Local 802, AFM as the exclusive collective-bargaining representative of its musicians, regarding wages, rates of pay, hours of employment, and other terms and conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of its musicians concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its office in New York, New York, and mail to each musician it has employed since December 10, 1998, a copy of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region, attesting to the steps that it has taken to comply with this decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively concerning wages, rates of pay, hours of employment, and other terms and conditions of employment with Associated Musicians of Greater New York, Local 802, AFM (the Union) as the exclusive bargaining representative of our musicians.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL bargain, on request, with the Union as the exclusive bargaining representative of our musicians and shall embody in a signed agreement any understanding reached.

AMERICAN OPERA MUSICAL THEATRE COMPANY

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."